

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

STRAIT REALTY, LLC)
a Missouri limited liability company,)
)
Plaintiff,)
) Case No. _____
v.)
) **JURY TRIAL DEMANDED**
YOUR FIRST CHOICE REALTY, LLC,)
a Missouri limited liability company,)
)
Defendant.)

COMPLAINT

COMES NOW Strait Realty, LLC, ("Strait Realty") by and through its undersigned attorneys, and for its Complaint against Defendant Your First Choice Realty, LLC ("YFCR"), herein states as follows:

PARTIES

1. Strait Realty is a corporation duly organized and existing under the laws of the State of Missouri with its principal place of business located at 13321 N. Outer 40 Road, Town & Country, MO 63017. Strait Realty provides real estate agency and brokerage servicing, including home listings, creation of purchases, representation of sellers and purchasers and other realtor related services.

2. Upon information and belief, Defendant YFCR is a Missouri limited liability company with a principal place of business located at 400 Chesterfield Center, Chesterfield, MO 63017. Upon information and belief, YFCR provides real estate agency and brokerage services said services primarily located in the St. Louis, Missouri, metropolitan area.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this case pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a) and (b) in that it includes an action for infringement of a federally registered trademark (15 U.S.C. § 1114) and false designation of origin and unfair competition arising under the Lanham Act (15 U.S.C. § 1125).

4. This Court has supplemental jurisdiction over the state law and common law claims of the State of Missouri under 28 U.S.C. § 1337(a) in that the state law and common law claims are so related to the federal claims in the action that the state law and, moreover, the state law and common law claims, form part of the same case or controversy and derive from a common nucleus of operative facts.

5. Venue is proper in this Court under 28 U.S.C. §§ 1331(b) and (c) in that upon information and belief both parties have conducted business in and have marketed, advertised and sold subject products into this judicial district.

FACTS COMMON TO ALL COUNTS

6. Strait Realty realleges and incorporates by reference all of the allegations of paragraphs 1-5 above, inclusive, as if set forth fully herein.

Strait Realty's Registration And Use Of Its "WHY PAY MORE THAN FOUR?"® Trademark

7. Strait Realty for many years has been engaged in and continues to be engaged in, real estate agency and brokerage servicing, including home listings, creation of purchases, representation of sellers and purchasers and other realtor related services (generally "Strait Realty's services").

8. Strait Realty is the owner of the entire right, title and interest in and to United States Registered Trademark No. 5,063,760, for the mark "WHY PAY MORE THAN FOUR?"®

real estate agencies and real estate brokerage, which issued on October 18, 2016 (Strait Realty's "Registered Mark"). (A copy of Strait Realty's Trademark Registration is attached hereto as Exhibit A, and incorporated by reference herein).

9. Strait Realty's above-identified Registered Mark (Exh. A) is in full force and effect, unrevoked, and un-cancelled.

10. Strait Realty also has established substantial common law rights in its "WHY PAY MORE THAN FOUR?"® trademark through Strait Realty's long and uninterrupted use of the mark in connection with Strait Realty's development, provision, marketing, advertising and sale of various real estate agency and brokerage services in association with its "WHY PAY MORE THAN FOUR?"® mark, all beginning at least as early as June 1, 2015.

11. Strait Realty has in the past and continues to expend a substantial amount of time, effort, money and other resources to develop and maintain the goodwill that has come to be associated with Strait Realty's services associated with Strait Realty's "WHY PAY MORE THAN FOUR?"® Registered Mark.

12. The sales, advertising and promotion of the services sold and offered by Strait Realty in association with its "WHY PAY MORE THAN FOUR?"® Registered Mark, have been substantial and as a result, Strait Realty has acquired a substantial reputation of high quality for various of Strait Realty's real estate agency and brokerage services with which the "WHY PAY MORE THAN FOUR?"® Registered Mark has been associated.

13. As a result of Strait Realty's efforts, Strait Realty's "WHY PAY MORE THAN FOUR?"® Registered Mark has come to be, and now is, well and favorably known to the public as being associated with various real estate agency and brokerage services of high quality.

14. Strait Realty's use of its "WHY PAY MORE THAN FOUR?"® Registered Mark in conjunction with various of Strait Realty's real estate services has thereby built up and now possesses valuable goodwill that is represented by its "WHY PAY MORE THAN FOUR?"® Registered Mark.

YFCR's Infringing Activities

15. YFCR has and continues to, without consent or authority from Strait Realty, use the trademark "WHY PAY MORE - WE ONLY CHARGE FOUR?"® and variations thereof in association with its own real estate agency and brokerage services. (Copies of representative Internet webpages, (other advertising?) of YFCR's real estate advertisements are collectively attached as Exhibit B, and incorporated by reference herein).

16. Upon learning of YFCR's activities, on August 15, 2019, Strait Realty immediately demanded that YFCR cease and desist all use of its "WHY PAY MORE - WE ONLY CHARGE FOUR?"® mark and similarly confusing marks. Exhibit C, attached, which is a true copy of said demand.

17. In response, YFCR has ignored Strait Realty's demand that it cease its infringing conduct.

18. YFCR's "WHY PAY MORE - WE ONLY CHARGE FOUR?"® mark is substantially and confusingly similar to Strait Realty's "WHY PAY MORE THAN FOUR?"® Registered Mark, and YFCR's failure to remove the mark after Strait Realty's August 15, 2019 letter further evidences YFCR's intentional bad-faith attempt to ride Strait Realty's coattails, pass off its services, and usurp the goodwill provided by Strait Realty's "WHY PAY MORE THAN FOUR?"® real estate services.

COUNT I
FEDERAL TRADEMARK INFRINGEMENT

19. Strait Realty realleges and incorporates by reference all of the allegations of paragraphs 1 – 18 above, inclusive, as if set forth fully herein.

20. YFCR's "WHY PAY MORE - WE ONLY CHARGE FOUR?"® mark is substantially similar to Strait Realty's "WHY PAY MORE THAN FOUR?"® Registered Mark.

21. YFCR, without the consent or authority of Strait Realty, has used and is continuing to use in commerce one or more marks "WHY PAY MORE - WE ONLY CHARGE FOUR?"® in association with services that are nearly identical to and/or so similar to Strait Realty's "WHY PAY MORE THAN FOUR?"® services in a manner that is likely to cause confusion, or to cause mistake as to the source, sponsorship or association of such use with Strait Realty.

22. By virtue of these facts, YFCR's actions constitute trademark infringement of Strait Realty's "WHY PAY MORE THAN FOUR?"® Registered Mark under 15 U.S.C. § 1125(a)(1)(A).

23. Further, any and all faults or imperfections in YFCR's real estate agencies, real estate brokerage and/or related services, in association with which YFCR uses one or more of the confusingly similar marks have reflected and will continue to reflect adversely on Strait Realty and Strait Realty's established goodwill and reputation unless the relief sought herein is granted.

24. YFCR's past and ongoing infringement of the nearly identical and confusingly similar marks as evidenced by its refusal to respond to Strait Realty's notice letter of August 15, 2019 (Exhibit C) has been deliberate, outrageous, reckless and willful, and has been committed with the intent to cause confusion, mistake, and to deceive and defraud the public,

entitling Strait Realty to enhanced damages, and to an award of attorneys' fees under the Lanham Act.

25. Strait Realty has been and will be severely injured by YFCR's acts.

26. Strait Realty's injury will be, is, and/or continues to be immediate and irreparable, and an award of monetary damages alone cannot fully compensate Strait Realty for its injuries.

27. Strait Realty lacks an adequate remedy at law.

COUNT II
FEDERAL COMMON LAW TRADEMARK INFRINGEMENT

28. Strait Realty realleges and incorporates by reference all of the allegations of paragraphs 1 - 27 above, inclusive, as if set forth fully herein.

29. YFCR's past and ongoing acts constitute trademark infringement or a or representation of fact in violation of the Lanham Act, 15 U.S.C § 1125.

30. YFCR's past and ongoing infringement in its use of the nearly identical and confusingly similar marks to Strait Realty's "WHY PAY MORE THAN FOUR?"® has been deliberate, outrageous, reckless and willful, and have been committed with the intent to cause confusion, mistake, and to deceive and defraud the public, entitling Strait Realty to enhanced damages, and to an award of attorneys' fees under the Lanham Act.

31. Strait Realty has been and will be severely injured by YFCR's acts.

32. Strait Realty's injury will be, is, and/or continues to be immediate and irreparable, and an award of monetary damages alone cannot fully compensate Strait Realty for its injuries.

33. Strait Realty lacks an adequate remedy at law.

COUNT III
FEDERAL UNFAIR COMPETITION

34. Strait Realty realleges and incorporates by reference all of the allegations of paragraphs 1- 33 above, inclusive, as if set forth fully herein.

35. YFCR's use, sale, advertising and/or marketing of its real estate agency, brokerage and related services in association with a mark nearly identical and confusingly similar to "WHY PAY MORE THAN FOUR?"® constitutes the use of a false designation of origin and unfair competition in violation of 15 U.S.C § 1125(a)(1)(A), in that such use is likely to confuse and mislead customers into believing that such goods and services of YFCR marketed and/or sold under such marks have the same source of origin as Strait Realty's associated with Strait Realty's "WHY PAY MORE THAN FOUR?"® Registered Mark, or lead customers to believe that the goods and/or related services of YFCR under said marks are in some way associated with or connected with or sponsored by or licensed by or authorized by or warranted by or emanate from Strait Realty, all to the great detriment of and injury to Strait Realty.

36. Further, all faults or imperfections in YFCR's related services, in association with which YFCR uses one or more of the above marks have reflected and will reflect adversely on Strait Realty and Strait Realty's established goodwill and reputation unless the relief sought herein is granted.

37. YFCR's past and ongoing acts as evidenced by its refusal to respond to Exhibit C, have been deliberate, outrageous, reckless and willful, and have been committed with the intent to cause confusion, mistake, and to deceive and defraud the public, entitling Strait Realty to enhanced damages, and to an award of attorneys' fees under the Lanham Act.

38. Strait Realty has been and will be severely injured by YFCR's acts.

39. Strait Realty's injury will be, is, and/or continues to be, immediate and irreparable, and an award of monetary damages alone cannot fully compensate Strait Realty for its injuries.

40. Strait Realty lacks an adequate remedy at law.

COUNT IV
MISSOURI AND MISSOURI COMMON LAW TRADEMARK INFRINGEMENT

41. Strait Realty realleges and incorporates by reference all of the allegations of paragraphs 1- 40 above, inclusive, as if set forth fully herein.

42. YFCR's past and ongoing acts as aforesaid therefore constitute common law trademark infringement of Strait Realty's "WHY PAY MORE THAN FOUR?"® Registered Mark and/or "WHY PAY MORE THAN FOUR?"® common law mark in violation of Missouri common law.

43. YFCR's wrongful acts have been deliberate, outrageous, reckless and committed with wrongful intent, and with YFCR's knowledge of their wrongful nature, and are intentional and willful, entitling Strait Realty to punitive damages and recovery of its attorneys' fees.

44. Strait Realty has been and will be severely injured by YFCR's acts.

45. Strait Realty's injury is, will be, and/or continues to be immediate and irreparable. An award of monetary damages alone cannot fully compensate Strait Realty for its injuries.

46. Strait Realty lacks an adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Strait Realty respectfully demands judgment in its favor and against YFCR, and prays that this Court:

A. Grant Strait Realty a permanent injunction against YFCR enjoining and restraining YFCR and its principals, agents, servants, employees, representatives and distributors directly or indirectly: (i) from using or displaying Strait Realty's "WHY PAY MORE THAN FOUR?"® Registered Mark or any similar or confusing variations thereof, including without limitation YFCR's "WHY PAY MORE - WE ONLY CHARGE FOUR?"® marks, and all similar or confusing variations thereof in its trade names, advertising, invoices, stationery, directory listings, domain names, websites, Internet metatags, keywords for Internet search engines, post URL or forwarding commands, hyperlinks, and any other electronic coding and search terms); and (ii) from continuing any and all acts of deception or unfair competition as alleged herein;

B. Issue an Order providing for the seizure and removal from YFCR's premises, and from all other sources available to YFCR, of all YFCR's property and goods bearing infringing trademarks, the means of making such marks and records documenting the manufacture, sale, or receipt of things involved in all such violations;

C. Issue an Order directing YFCR to account to Strait Realty for any and all profits derived by YFCR from the sale of all goods and/or services derived through or associated with YFCR's acts of infringement and/or unfair competition, and that Strait Realty be awarded damages for YFCR's infringement of and unfair competition as to Strait Realty's Mark so as to fully compensate Strait Realty for all damages including loss of revenue, loss of goodwill, and damage to its goodwill and reputation as a result of YFCR's acts;

D. Issue an Order that all of YFCR's, merchandise, labels, signs, prints, packages, advertisements, and any other tangible items in the possession of YFCR bearing either the "WHY PAY MORE - WE ONLY CHARGE FOUR?"® mark and/or any other trademarks confusingly similar thereto, as well as all molds, plates, mortices, computer programs and files, and all other tangible and/or intangible means of making the same, shall be accounted, delivered up and destroyed;

E. Award to Strait Realty and against YFCR, all Strait Realty's damages and YFCR's profits arising from any and all of YFCR's use of the infringing mark and/or any other trademarks confusingly similar thereto;

F. Treble damages or profits, whichever is greater;

G. Award Strait Realty its attorneys' fees as permitted by Federal law including but not limited to the Lanham Act and 15 U.S.C. § 1117, state law, and common law;

H. Award Strait Realty punitive damages in an amount sufficient to deter YFCR from perpetrating such conduct as alleged herein in the future;

I. Award Strait Realty all costs of this action, and assess all costs against YFCR ;

J. Award Strait Realty pre-judgment and post-judgment interest against YFCR; and

K. Award and grant Strait Realty all such other and further relief as the Court may deem proper and appropriate; and

JURY TRIAL DEMAND

Strait Realty hereby requests a jury trial.

Respectfully Submitted,

Sandberg Phoenix & von Gontard, P.C.

By: /s/ G. Harley Blosser

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